IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 16927 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MAYURSINH SATUBHA JADEJA

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 16927 of 2003

MR PRAVIN GONDALIYA for Petitioner No. 1

MS PB SHETH AGP for Respondent No. 1-3

RULE SERVED for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 21/04/2004

ORAL JUDGEMENT

The petitioner above named has preferred this

petition under Article 226 of the Constitution of India for appropriate writ, order or direction, for quashing and setting aside an order of detention dated 14/11/03 passed by respondent no.1 herein, in exercise of the powers u/s.3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (for short, "the said Act").

2. It was alleged against the petitioner that five I.P.C. offences were registered against him before different Police Stations in Rajkot City at C.R.No.350/2003, 407/2003, 596/2003, 597/2003 and 456/2003 during the month of October' 03. It was also alleged that two unnamed witnesses had rendered statements against him. On the strength of the aforesaid five registered offences and two statements of unnamed witnesses, the detaining authority found the petitioner to be a "dangerous person" and accordingly, the impugned order of detention was passed against the petitioner.

3. Feeling aggrieved by the said order of his detention, the petitioner has preferred this petition before this Court. It has been contended here that there was no justification on the part of the detaining authority for passing an order of detention against the petitioner. That, therefore, the order of detention is illegal and it deserves to be quashed and set aside.

4. On receipt of the petition, Rule was issued and in response to the service of notice of Rule, Ms.P B Sheth learned AGP has appeared on behalf of the respondents. I have heard the learned advocates for the parties and have perused the papers.

5. During the course of hearing, the learned advocate for the petitioner has contended that simply because some I.P.C. offences have been registered against the petitioner, it could not lead to an inference that the alleged activities of the petitioner raised a threat to public order.

6. On going through the information supplied to the petitioner, it can be said that various offences punishable under the I.P.C. have been registered against him. These are individual offences involving individual private properties. Therefore, it could not be said that on account of the registration of the aforesaid offences there was a threat to public order.

7. So far the fifth offence is concerned, it relates to a land grabbing case. It has been alleged that government land has been grabbed by the petitioner and it

has been sold as private land. On this aspect of the case, there is a decision of this Court rendered in S.C.A.No.181/1992 dated 23/04/92. Para 9 & 10 of the said decision reads as under;

Para 9 : "It would be relevant to consider that in the said matter also the petitioner was detained saying that he was a property grabber under the provisions of the said Act. While dealing with the said issue, an argument was advanced was advanced that there was no material before the detaining authority to come to a conclusion that if the petitioner had not been detained, the maintenance of public order would be breached."

Para 10 : "However, it was represented on behalf of the State that the plot holders had a feeling in their minds that they were cheated and a feeling of insecurity about the property and capital which they had invested in the plots while purchasing the same from the petitioner and therefore, there was material on record to come to a conclusion that if the petitioner was not detained, then it would come in the way of maintenance of public order."

8. In view of the aforesaid decision of this Court, it would be difficult to accept that in a land grabbing case, the petitioner's activity would be treated to be one which would stage a threat to public order.

9. The detaining authority has also considered statements of two witnesses whose names have not been disclosed. The learned advocate for the petitioner has argued that the names of the witnesses were required to be disclosed and when the names were not disclosed, the petitioner was unaware about those names and hence, the petitioner could not submit an effective representation to the detaining authority or to the State Government.

10. The learned AGP contends that u/s.9(2) of the said Act, the detaining authority has a power of privilege to withhold the names of the witnesses from the notice of the petitioner. There is no dispute about the same. At the same time, it is required to be considered that such a representation is required to be considered on appropriate material. Before a right or power of privilege is claimed u/s.9(2) of the said Act, the detaining authority has to ascertain by appropriate inquiry that there is a genuine fear or apprehension in

the minds of the witnesses on account of which they apprehend fear and therefore, their names were required to be kept away from the notice of the petitioner. In the present case, we find that the records do not show that there was credible material before the detaining authority in order to withhold the names of the witnesses from the notice of the petitioner. In absence of such material on record, it cannot be said that the detaining authority was justified in withholding the names of those witnesses. Therefore, on these counts, the order of detention is required to be quashed and set aside.

11. The learned advocate for the petitioner has drawn my attention to the fact that the petitioner was in judicial custody and it has been observed in the grounds of detention at page 22 that the petitioner would apply for bail and would get himself bailed out and thereafter, would continue with the said illegal activities. The argument is that there was no material before the detaining authority to make the aforesaid observations.

12. It is not much in dispute that in two cases, at Sr.No.1 & 5, the petitioner was under detention. In one of the two cases, the bail application was rejected by the Sessions Court and in the second one, the bail application was rejected by this Court. Therefore, it would be difficult to accept as to on what basis the above observation was made by the detaining authority.

13. In the case of Amritlal & Ors. V/s. Union Government through Secretary, Ministry of Finance reported in AIR 2000 SC 3675 it has been observed as follows;

> "There must be cogent materials before the officer passing the detention order that the detenu is likely to be released on bail. The inference must be drawn from the available material on record and must not be the ipse dixit of the officer passing the order of detention. Likelihood of detenu's moving an application for bail is not a cogent material and detention order based on such material is liable to be quashed. The reasoning that there is "likelihood to be released on bail" is different from "likelihood of his moving an application for bail".

14. The above decision goes to show that the detaining authority must have cogent material with it in order to come to a finding that the petitioner would apply for bail, would get himself bailed out and

thereafter, would continue with the said illegal activities. In the present case also, there was no material before the detaining authority to observe as aforesaid.

15. Similar view was adopted in the case of Dharmendra Suganchand Dhelawat & Anr. V/s. Union of India & Ors. reported in AIR 1990 SC 1196.

16. On the aforesaid considerations, the order of detention cannot be sustained in the eye of law and it is required to be quashed and set aside.

17. For the foregoing reason, this petition is allowed. The impugned order of detention dated 14/11/03 passed by respondent no.1 against the petitioner, is ordered to be quashed and set aside. Detenu, Mayursinh Satubha Jadeja, is ordered to be set at liberty forthwith, if no longer required in any other case. Rule is made absolute with no order as to costs. Direct service permitted.

(D. P. Buch, J.)

pravin/